



FAIRFAX
COUNTY

ATTACHMENT 2

STAFF REPORT

V I R G I N I A

PROPOSED ZONING ORDINANCE AMENDMENT

Cluster Subdivisions

PUBLIC HEARING DATES

Planning Commission

September 9, 2004 at 8:15 p.m.

Board of Supervisors

September 27, 2004 at 4:00 p.m.

PREPARED BY
ZONING ADMINISTRATION DIVISION
DEPARTMENT OF PLANNING AND ZONING
(703) 324-1314

August 2, 2004

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For additional information call (703) 324-1334.

STAFF COMMENT

The proposed amendment is in response to a June 7, 2004, request from the Board of Supervisors for staff to prepare a Zoning Ordinance amendment as soon as possible that will allow for rezoning from a conventional zoning district where cluster subdivisions are not permitted by right to the corresponding PDH District with the provision of one bonus dwelling unit. The proposed amendment addresses the Board's request and also makes other minor editorial revisions regarding the recently adopted cluster subdivision Zoning Ordinance provisions.

On June 7, 2004, the Board of Supervisors adopted amendments to the Zoning Ordinance, Subdivision Ordinance and Public Facilities Manual related to cluster subdivisions which became effective on July 1, 2004. These amendments were prompted, in part, by a 2002 amendment to Sect. 15.2-2286(A)(12) to the Code of Virginia which requires localities to amend their land use ordinances to comply with the amended statute no later than July 1, 2004. The Code of Virginia provides that localities may adopt standards to allow cluster subdivisions through an administrative approval process without a public hearing. The Code of Virginia also provides that localities may opt to allow cluster subdivisions through the rezoning or special exception process but in doing so, bonus density provisions must be provided. In addition, the 2002 amendment provides that localities may decide to eliminate cluster subdivisions as a development option in some or all of its zoning districts.

Under the provisions of the Zoning Ordinance, cluster subdivisions are distinguished from conventional subdivisions by minimum open space requirements, minimum district size requirements, reduced lot size requirements in certain circumstances and reduced yard requirements. The cluster subdivision development option is available in the R-C, R-E, R-1, R-2, R-3 and R-4 Districts. However, under the recently adopted amendments to the Zoning Ordinance, the approval process for new cluster subdivisions varies by zoning district. Cluster subdivisions are allowed subject to special exception approval by the Board of Supervisors in the R-C, R-E and R-1 Districts with a potential maximum density of 0.22 dwelling unit per acre, 0.55 dwelling unit per acre and 1.1 dwelling units per acre, respectively. These potential maximum densities for cluster subdivisions in the R-C, R-E and R-1 Districts include a 10% density bonus above the maximum permitted density for a conventional subdivision within the applicable zoning district. Additionally, cluster subdivisions are allowed in the R-3 and R-4 Districts subject to special exception approval by the Board of Supervisors with a potential density bonus of one dwelling unit more than the maximum density applicable to a conventional subdivision when they contain at least 2 acres but less than 3.5 acres of land area. Cluster subdivisions within the R-2 District and cluster subdivisions with at least 3.5 acres of more of land area in the R-3 and R-4 Districts are subject to an administrative subdivision review process, with approval by the Director of the Department of Public Works and Environmental Services (Director).

Under the cluster provisions adopted on June 7, 2004, a new Sect. 2-421 was added to the Zoning Ordinance. This section clarifies the status of cluster subdivisions approved prior to July 1, 2004, the effective date of the recently adopted amendment, and cluster subdivisions that may be approved in the future. This section also describes the provision of bonus densities that are mandated

by the 2002 amendment to the Code of Virginia.

Newly adopted Par. 6 of Sect. 2-421 specifically addresses rezoning from a conventional district to a PDH District for the development of a single family detached subdivision. Par. 6 allows the Board to approve a rezoning to a PDH District for a development consisting, in whole or in part, of single family detached dwelling units without bonus density, provided that the application is for a rezoning to a PDH District that has a higher permitted maximum density than the existing zoning of the application property or is a rezoning from a district that permits cluster development by-right with Director approval. For example, a rezoning application from the R-1 Residential District, One Dwelling Unit/Acre to the PDH-2 Planned Development Housing District, Two Dwelling Units/Acre for the development of single family dwellings could be approved without bonus density since the requested PDH District has a greater permitted maximum density than that permitted in the existing zoning district. Given that cluster subdivisions are allowed by right in the R-2 District and in the R-3 and R-4 Districts when the cluster subdivision contains 3.5 acres or greater of land area, Par. 6 also allows the approval of a rezoning request from those districts to a PDH District of the same maximum permitted density without bonus density.

However, due to concerns about adding bonus densities to the PDH Districts, Par. 6 of Sect. 2-421 currently prohibits a rezoning to a PDH District when the existing zoning of the property has the same permitted maximum density as the requested PDH District and when such existing zoning permits cluster development with special exception approval. As such, a rezoning from the R-1 District to the PDH-1 District or from the R-3 or R-4 Districts to the corresponding PDH-3 or PDH-4 Districts for the development of single family detached dwellings, when the application area contains 2 acres or greater but less than 3.5 acres, is not permitted pursuant to Par. 6. Par. 6 of Sect. 2-421 also prohibits the rezoning from the R-5 District to the PDH-5 District or from the R-8 District to the PDH-8 District for the development, in whole or in part, of single family dwellings.

When the Board of Supervisors adopted the current cluster provisions on June 7, 2004, there was discussion concerning Par. 6 of Sect. 2-421 and its impact on pending and/or future rezoning applications. As a result of concerns regarding the previously discussed prohibitions on rezoning to a PDH District, the Board directed staff to prepare an amendment that allows for a rezoning from a conventional zoning district where cluster subdivision is not permitted by right to the PDH District with the same permitted maximum density as the existing zoning district with the potential bonus density of 1 dwelling unit. The proposed amendment responds to the Board's request by revising Par. 6 to allow for such a rezoning, provided that the application property is rezoned from the R-1 District or is rezoned from the R-3 or R-4 Districts and contains a land area of 2 acres or greater but less than 3.5 acres, with the potential bonus density of one dwelling unit. The addition of one more potential dwelling unit above the permitted maximum density of the requested PDH District meets the bonus density provision requirements of Sect. 15.2-2286(A)(12) of the Code of Virginia.

The proposed amendment also revises Par. 6 of Sect. 2-421 to allow for a rezoning from the R-5 District to the PDH-5 District or from the R-8 District to the PDH-8 District. This change is

recommended given that single family detached dwellings are permitted in the R-5 and R-8 Districts, and there is no provision that allows a cluster subdivision by-right in these districts. The same bonus provisions as discussed in the preceding paragraph would be applicable for a rezoning from the R-5 or R-8 Districts to the PDH-5 or PDH-8 Districts, respectively.

Sect. 15.2-2286(A)(12) of the Code of Virginia provides localities the flexibility to prohibit cluster subdivisions of 2 acres or less in size and that provision was partially used as the basis for requiring a minimum district size of 2 acres for cluster subdivisions in the R-2, R-3 and R-4 Districts. Under the current cluster subdivision provisions, an applicant could concurrently seek special exception approval for a cluster subdivision containing less than 3.5 acres of land area in the R-3 and R-4 Districts and a waiver of the cluster subdivision minimum district size requirement, and still obtain one bonus unit. Staff believes that it was not the intent of the Board to allow bonus densities for cluster subdivisions containing less than 2 acres of land area and is, therefore, recommending that Par. 2 of Sect. 2-421 be revised to specify that a density above the permitted maximum density for conventional subdivisions and cluster subdivisions approved by the Director within the respective zoning district shall not be permitted for cluster subdivisions requiring special exception approval and containing less than 2 acres of land area.

Finally, the proposed amendment makes some editorial revisions to the cluster subdivision provisions throughout the Zoning Ordinance. The intent of these changes is to provide clarification and consistency between provisions and is not intended to change their original meaning.

In conclusion, the proposed amendment is in response to a very specific Board request and provides needed clarifications. Therefore, staff recommends approval of the proposed amendment with an effective date of 12:01 A.M. on the day following adoption.

PROPOSED AMENDMENT

This proposed Zoning Ordinance amendment is based on the Zoning Ordinance in effect as of August 2, 2004 and there may be other proposed amendments which may affect some of the numbering, order or text arrangement of the paragraphs or sections set forth in this amendment, which other amendments may be adopted prior to action on this amendment. In such event, any necessary renumbering or editorial revisions caused by the adoption of any Zoning Ordinance amendments by the Board of Supervisors prior to the date of adoption of this amendment will be administratively incorporated by the Clerk in the printed version of this amendment following Board adoption.

1 Amend Article 2, General Regulations, as follows:

2
3 - Amend Part 4, Qualifying Lot and Yard Regulations, by revising Sect. 2-421, Cluster
4 Subdivisions, to read as follows:

- 5
6 1. Cluster subdivisions may be permitted in the R-2 District with a minimum district size of two
7 (2.0) acres or greater and may be permitted in the R-3 and R-4 Districts which have a
8 minimum district size of three and one-half (3.5) acres or greater, with approval by the
9 Director pursuant to Chapter 101 of The Code, The Subdivision Ordinance.
- 10
11 2. Cluster subdivisions may be permitted in the R-C, R-E and R-1 Districts and may be
12 permitted in the R-3 and R-4 Districts which have a minimum district size of two (2) acres
13 or greater but less than three and one-half (3.5) acres with special exception approval by
14 the Board pursuant to Sect. 9-615. A density above the permitted maximum density for
15 conventional subdivisions or cluster subdivisions approved by the Director within the
16 respective zoning district shall not be permitted for cluster subdivisions requiring special
17 exception approval that contains less than two (2) acres of land area.
- 18
19 3. After July 1, 2004, special exception approval of new cluster subdivisions in the R-2
20 District and new cluster subdivisions in the R-3 and R-4 Districts which have a minimum
21 district size of three and one-half (3.5) acres or greater, shall not be permitted.
- 22
23 4. After July 1, 2004, the Board may approve a proffered rezoning to the R-2 District or a
24 proffered rezoning to a R-3 or R-4 District which has a minimum district size of three and
25 one-half (3.5) acres or greater, for the development of a cluster subdivision without bonus
26 density when the application is for a rezoning to a residential district that has a higher
27 permitted maximum density than the permitted maximum density of the existing zoning of the
28 application property. In conjunction with Board approval of such a proffered rezoning, all
29 minimum district size, lot area, lot width and open space requirements of the district and all
30 applicable cluster subdivision provisions of Chapter 101 of The Code, The Subdivision

Ordinance, shall be met without modification or waiver. However, the provisions of Sect. 18-204 shall apply to such an approved proffered rezoning.

5. After July 1, 2004, the Board may approve a proffered rezoning to the R-C, R-E or R-1 District or a proffered rezoning to a R-3 or R-4 District which has a minimum district size of two (2) acres or greater but less than three and one-half (3.5) acres, for the development of a cluster subdivision without bonus density when the application is for a rezoning to a residential district that has a higher permitted maximum density than the permitted maximum density of the existing zoning of the application property.
6. After July 1, 2004, the Board may approve a rezoning to a PDH District for a development consisting, in whole or in part, of single family detached dwelling units ~~without bonus density, provided that the application is for rezoning to a PDH District that has a higher permitted maximum density than the permitted maximum density of the existing zoning of the application property or is a rezoning from a district that permits cluster development with Director approval. Rezoning to a PDH District for a development consisting, in whole or in part, of single family detached dwellings shall be prohibited when the existing zoning of the property has the same permitted maximum density as the requested PDH District and such existing zoning permits cluster development with Board approval. In addition, rezoning to a PDH District shall be prohibited where the application request is from the R-5 District to the PDH-5 District or from the R-8 District to the PDH-8 District for the development, in whole or in part, of single family detached dwellings~~ subject to the following:
 - A. A rezoning to a PDH District with a higher permitted maximum density than the existing zoning of the application property or a rezoning from a commercial or industrial district to a PDH District shall be permitted without bonus density.
 - B. A rezoning to a PDH District with the same permitted maximum density as the existing zoning of the application property shall be permitted without bonus density, provided that the application property is rezoned from the R-2 District, or is rezoned from the R-3 or R-4 Districts and contains three and one-half (3.5) acres or greater of land area.
 - C. A rezoning to a PDH District of the same permitted maximum density as the existing zoning district of the application property shall be permitted, provided that the application property is rezoned from the R-1, R-5 or R-8 Districts or is rezoned from the R-3 or R-4 Districts and contains a land area of two (2) acres or greater but less than three and one-half (3.5) acres. The maximum permitted density of such a rezoning shall not exceed the permitted maximum density of the requested PDH District plus one (1) bonus dwelling unit.
7. Cluster subdivisions in the R-C, R-E, R-1, R-2, R-3 and R-4 Districts that were approved

by proffered rezoning by the Board prior to July 1, 2004, shall continue ~~pursuant to be~~ subject to the proffered rezoning approval. Amendments to such proffered rezonings for cluster subdivisions in the R-C, R-E, R-1, R-2, R-3 and R-4 Districts ~~shall be pursued~~ may be filed and considered in accordance with the provisions of Sect. 18-204, except that no amendment shall be ~~pursued~~ filed or approved that permits the cluster subdivision to be enlarged, expanded, increased in density or relocated. Minor modifications to such subdivisions ~~shall~~ may be permitted pursuant to Sect. 18-204.

8. Special exceptions for cluster subdivisions in the R-C, R-E, R-1, R-2, R-3 and R-4 Districts that were approved by the Board prior to July 1, 2004 and which were established, shall remain valid and the cluster subdivision shall continue ~~pursuant to be~~ subject to the special exception approval and any development conditions imposed by such approval. Amendments to such special exceptions for cluster subdivisions in the R-C, R-E, R-1, R-2, R-3 and R-4 Districts, ~~shall be pursued~~ may be filed and considered in accordance with the provisions of Sections 9-014 and 9-615. Minor modifications to such subdivisions ~~shall~~ may be permitted pursuant to Sect. 9-004.
9. Cluster subdivisions in the R-E, R-1, R-2, R-3 and R-4 Districts that were approved administratively by the Director prior to October 20, 1987, or that are subject to the grandfathering provisions adopted pursuant to Zoning Ordinance Amendment ZO 87-150, may continue pursuant to any conditions of such approval. Any modification to such subdivision may be approved by the Director, pursuant to the requirements of this Section and Chapter 101 of The Code, The Subdivision Ordinance.

Amend Part 9, Floodplain Regulations, Sect. 2-903, Permitted Uses, by revising Par. 10 to read as follows:

Except as provided in Par. 10 below for cluster subdivisions, the following uses and topographic improvements, as qualified, may be permitted in a floodplain upon a determination by the Director that such use is permitted in the zoning district in which located, and that the use is in accordance with the provisions of this Part and the standards and criteria set forth in the Public Facilities Manual. Any such approval by the Director shall be in writing and shall specify such conditions deemed necessary to ensure that the proposed construction and resultant use conform to the provisions of this Part.

Any use, including associated fill, permitted in the zoning district in which located, which does not meet the qualifications set forth below as determined by the Director, may be permitted upon the approval of a special exception by the Board.

10. For cluster subdivisions in the R-2 District and cluster subdivisions in the R-3 and R-4 Districts which have a minimum district size of three and one-half (3.5) acres or greater, only the following uses and improvements may be permitted by the Director, driveways that do not exceed 5000 square feet in area and will not require major fill, the extension of or

connection to existing public and private utilities, trails depicted on the comprehensive plan trails map, trails connecting to trails depicted on the comprehensive plan trails map, channel improvements and erosion control measures performed by or at the direction of the County or as may be required by County ordinances, regional stormwater management facilities included in the regional stormwater management plan, and roadway floodplain crossings, as qualified by Par. 6 above, shall be permitted in a floodplain with Director approval provided that such encroachments are the minimum necessary and are provided in a manner that minimizes disturbance to the floodplain to the greatest practical extent, both as determined by the Director.:

- A. Driveways that do not exceed 5000 square feet in area and will not require major fill.
- B. Extension of or connection to existing public and private utilities.
- C. Trails depicted on the comprehensive plan trails map and/or trails connecting to trails depicted on the comprehensive plan trails map.
- D. Channel improvements and erosion control measures performed by or at the direction of the County or as may be required by County ordinances.
- E. Regional stormwater management facilities included in the regional stormwater management plan.
- F. Roadway floodplain crossings.

Amend Article 3, Residential District Regulations, as follows:

- Amend the R-3 Residential District, Three Dwelling Units/Acre as follows:

- Amend Sect. 3-301, Purpose and Intent, to read as follows:

The R-3 District is established to provide for single family detached dwellings at a density not to exceed three (3) dwelling units per acre; to provide for affordable dwelling unit developments at a density not to exceed three and six tenths (3.6) dwelling units per acre; to allow other selected uses which are compatible with the low density residential character of the district; and otherwise to implement the stated purpose and intent of this Ordinance.

- Amend Sect. 3-305, Use Limitations, by revising Par. 3 to read as follows:

3. Cluster subdivisions may be permitted in accordance with the provisions of Sect. 9-615 when the cluster subdivision has a minimum district size of two (2) acres or greater but less than three and one-half (3.5) acres, and with the provisions of Sect. 2-421 when the cluster subdivision has a minimum district size of three and one-half (3.5) acres or greater.

- **Amend Sect. 3-306, Lot Size Requirements, by revising Par. 1 to read as follows:**

1. Minimum district size for cluster subdivisions:
 - A. Cluster subdivisions containing a minimum district size of two (2) acres or greater but less than three and one-half (3.5) acres shall be subject to special exception approval.
 - B. Cluster subdivisions containing a minimum district size of three and one-half acres (3.5) acres or greater shall be subject to approval by the Director.

- **Amend Sect. 3-308, Maximum Density, by revising Par. 2 to read as follows:**

2. Cluster subdivisions:
 - A. Three (3) dwelling units per acre for cluster subdivisions approved by the Director in accordance with ~~Section~~ Sect. 2-421, or that are the result of proffered rezoning from a district that allows a permitted maximum density of less than three (3) dwelling units per acre;.
 - B. Three dwelling units per acre plus one (1) additional bonus dwelling unit for cluster subdivisions containing a minimum district size of two (2) acres or greater but less than three and one-half (3.5) acres and approved by special exception.

- **Amend the R-4 Residential District, Four Dwelling Units/Acre as follows :**

- **Amend Sect. 3-401, Purpose and Intent, to read as follows:**

The R-4 District is established to provide for single family detached dwellings ~~at a density not to exceed four (4) dwelling units per acre;~~ to provide for affordable dwelling unit developments ~~at a density not to exceed four and eight tenths (4.8) dwelling units per acre;~~ to allow other selected uses which are compatible with the low density residential character of the district; and otherwise to implement the stated purpose and intent of this Ordinance.

- **Amend Sect. 3-405, Use Limitations, by revising Par. 3 to read as follows:**

3. Cluster subdivisions may be permitted in accordance with the provisions of Sect. 9-615 when the cluster subdivision has a minimum district size of two (2) acres or greater but less than three and one-half (3.5) acres, and with the provisions of Sect. 2-421 when the cluster subdivision has a minimum district size of three and one-half (3.5) acres or greater.

- **Amend Sect. 3-406, Lot Size Requirements, by revising Par. 1 to read as follows:**

1. Minimum district size for cluster subdivisions:
 - A. Cluster subdivisions containing a minimum district size of two (2) acres or greater but less than three and one-half (3.5) acres shall be subject to special exception approval.
 - B. Cluster subdivisions containing a minimum district size of three and one-half acres (3.5) acres or greater shall be subject to approval by the Director.

- **Amend Sect. 3-408, Maximum Density, by revising Par. 2 to read as follows:**

2. Cluster subdivisions:
 - A. Four (4) dwelling units per acre for cluster subdivisions approved by the Director in accordance with ~~Section~~ Sect. 2-421, or that are the result of proffered rezoning from a district that allows a permitted maximum density of less than four (4) dwelling units per acre;
 - B. Four dwelling units per acre plus one (1) additional bonus dwelling unit for cluster subdivisions containing a minimum district size of two (2) acres or greater but less than three and one-half (3.5) acres and approved by special exception.

Amend Article 6, Planned Development District Regulations, Part 1, PDH Planned Development Housing District, Sect. 6-109, Maximum Density, by revising Par. 1 to read as follows:

1. For purposes of computing density, the PDH District is divided into subdistricts in which the residential density is limited as set forth below, except that the maximum density limitations may be increased in accordance with Sect. 2-421 and/or the requirements for affordable dwelling units set forth in Part 8 of Article 2.

Subdistrict	Density
PDH-1	1 dwelling unit per acre
PDH-2	2 dwelling units per acre
PDH-3	3 dwelling units per acre
PDH-4	4 dwelling units per acre
PDH-5	5 dwelling units per acre
PDH-8	8 dwelling units per acre
PDH-12	12 dwelling units per acre
PDH-16	16 dwelling units per acre
PDH-20	20 dwelling units per acre
PDH-30	30 dwelling units per acre
PDH-40	40 dwelling units per acre

Amend Article 9, Special Exception, Part 6, Category 6 Miscellaneous Provisions Requiring Board of Supervisors' Approval, as follows:

- **Amend Sect. 9-612, Provisions for Waiving Open Space Requirements, by revising the introductory paragraph to read as follows:**

Except for cluster subdivisions in the R-2 District and cluster subdivisions in the R-3 and R-4 Districts which have a minimum district size of three and one-half (3.5) acres or greater, the Board may approve, either in conjunction with the approval of appropriate proffered conditions or as a special exception, the waiving of the open space requirement presented for a given zoning district and/or the open space requirement for cluster subdivisions in the R-C R-E and R-1 Districts and cluster subdivisions in the R-3 and R-4 Districts which have a minimum district size of two (2) acres or greater but less than three and one-half (3.5) acres, set forth in Par. 4 of Sect. 2-309, but only in accordance with the following provisions:

- **Amend Sect. 9-615, Provisions for a Cluster Subdivision, by revising the introductory paragraph to read as follows:**

The Board may approve, either in conjunction with the approval of a rezoning or as a special exception, a cluster subdivision in an R-C, R-E, or R-1 District, or a cluster subdivision in a R-3 or R-4 District which has a minimum district size of two (2) acres or greater but less than three and one-half (3.5) acres, but only in accordance with the provisions of this section. Special exceptions

1 for cluster subdivisions in the R-2 District and cluster subdivisions in the R-3 or R-4 Districts which
2 have a minimum district size of three and one-half (3.5) acres or greater, that were approved by the
3 Board prior to July 1, 2004, shall remain valid and the cluster subdivisions shall continue pursuant to
4 such special exception approval and any development conditions imposed by such approval.
5 Amendments to such special exceptions for cluster subdivisions in the R-2 District and cluster
6 subdivisions in the R-3 or R-4 Districts which have a minimum district size of three and one-half
7 (3.5) acres or greater, shall be pursued in accordance with the provisions of Sect. 9-014 and the
8 following: